

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

RICKY L. TILLMAN, JR., surviving son of
Ricky L. Tillman, Sr., deceased,

Plaintiff,

v.

THE BNSF RAILWAY COMPANY,
DONALD HANDY, and TITUSAN
TOWNSEND,

Defendants.

Cause No.

NOTICE OF REMOVAL

Defendant BNSF Railway Company, by and through the undersigned attorneys, , pursuant to 28 U.S.C. §§ 1332 and 1441, files this Notice or Removal, hereby removing this action from the Circuit Court of Pemiscot County, Missouri, to the United States District Court of the Eastern District of Missouri, stating as follows:

STATE COURT PROCEEDING

1. Plaintiff Ricky Tillman, Jr. filed this action on August 19, 2020, in the Circuit Court of Pemiscot County, Missouri.
2. Plaintiff named the BNSF Railway Company, Donald Handy, and Titusan Townsend as defendants.

DIVERSITY OF PARTIES

3. Ricky L. Tillman, Jr., is a citizen of the state of Arkansas.
4. BNSF Railway Company is a citizen of the states of Texas and Delaware, as it is a corporation organized under the laws of Delaware and maintains its principal place of business in the State of Missouri.

5. Defendant Donald Handy is believed to be a citizen of the State of Missouri. However, Defendant Donald Handy has not yet been served with process in this matter.

6. Defendant Titusan Townsend was believed to be a citizen of the State of Missouri at the time of his death. Plaintiff has proposed that Wally Bley be appointed as the Defendant ad litem in this matter to represent the interests of Defendant Townsend. However, the Court has not yet appointed Mr. Bley as defendant ad litem, and he cannot yet be served or waive service on behalf of Defendant Townsend.

7. Where diversity of citizenship exists between the Plaintiff and the Defendants, the forum defendant rule does not bar removal of the action, where the forum defendant has not yet been served. *Encompass Ins. Co. v. Stone Mansion Restaurant Inc.*, 902 F.3d 147, 153-54 (3d Cir. 2018).

AMOUNT IN CONTROVERSY

8. Plaintiff seeks to recover for the allegedly wrongful death of his father, including the alleged “severe and conscious pain and suffering” prior to his death. As a wrongful death beneficiary, Plaintiff also seeks to recover for funeral expenses and the lost income from Mr. Tillman, Sr.

9. Based on prior verdicts and settlements obtained by Plaintiff’s counsel’s firm in cases involving injury following collision between a train and motor vehicle, the amount in controversy exceeds \$75,000.

PROCEDURAL REQUIREMENTS FOR REMOVAL

10. This removal is timely as the state court action was filed on August 14, 2020, and this matter is being removed on August 21, 2020.

11. A copy of the state court docket sheet and all filings to date, to the best of Defendant's knowledge, is attached as Exhibit A.
12. A copy of the state court Complaint is attached as Exhibit B.
13. A listing of all pending motions from the state court is attached as Exhibit C.
14. This district's original filing form is attached as Exhibit D.
15. This district civil cover sheet is attached as Exhibit E.
16. As no defendant has been served in this matter, no consent of the other defendants pursuant to 28 U.S.C. § 1446(b)(2)(A) is required.

WHEREFORE, Defendant BNSF Railway Company hereby removes this action to the United States District Court for the Eastern District of Missouri and requests any future relief that this Court deems appropriate and just.

Respectfully submitted,

/s/ William A. Brasher

William A. Brasher, #30155

Allison E. Lee, #61626

BOYLE BRASHER LLC

1010 Market Street, Suite 950

St. Louis, Missouri 63101

P: (314) 621-7700

F: (314) 621-1088

wbrasher@boylebrasher.com

alee@boylebrasher.com

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of August 2020, the foregoing was filed electronically using the Court's CM/ECF system, which will send a notice of electronic filing to all counsel of record:

Michael J. Ponder
Cook, Barkett, Ponder & Wolz, P.C.
P.O. Box 1180
Cape Girardeau, MO 63702-1180
Attorneys for Plaintiff

Bley & Evans, L.C.
1000 W. Nifong Blvd.
Building 4, Suite 200
Columbia, MO 65203
Proposed Defendant Ad Litem

/s/ William A. Brasher